Jivanjit Kaur a/p Sohan Singh v Amar Singh a/l Sunder Singh

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO S2(S5)–24–659 OF 1999
KAMALANATHAN RATNAM J
26 JANUARY 2000

Land Law *— Restraints of dealings — Caveats — Unchallenged averments of facts, whether sufficient to retain caveat — Real dispute — One party already filed civil suit to determine dispute — Whether to remove caveat*

The plaintiff was the wife of Balwant Singh a/l Sunder Singh, deceased ('the deceased'). The defendant was the elder brother of the deceased. The property in dispute was held under title No GM 1164, Lot 4159, Mukim Batu, Daerah Kuala Lumpur, Negeri Wilayah Persekutuan ('the land'). The defendant's mother, who then was the registered owner of the land, had given permission to the defendant in 1952 to build the house presently known No 241-C, Sentul Pasar, 51000 Kuala Lumpur ('the house') on the land and the defendant has been living with his wife and children there ever since. Subsequently, the mother of the deceased transferred the land into the name of the deceased. Upon the death of her husband, the plaintiff obtained an order transferring the land into her name. The plaintiff had tried evicting the defendant without success. The defendant entered a caveat on the land. The plaintiff applied for an order to remove the caveat and for a further order that the Registrar of Titles be directed to cancel the caveat and that the defendant be precluded from entering any further caveat on the land and for costs.

Held, dismissing the plaintiff's application with costs:

(1) It was only just that status quo be maintained until disposal of the civil suit. The defendant had made averments of facts sufficient to retain the caveat and the plaintiff had no knowledge of those facts. In the circumstances, the court had to accept those unchallenged averments of facts. At least in equity, the defendant would seem to have a registrable interest in the land in respect of the house which he had built and in which he had been living rent free and uninhibited since 1952 (see p 58E–F); *Inter-Continental Wiring Co Sdn Bhd v Societe Des Etains De Bayas Tadjub* [1974] 1 MLJ 145 followed.

(2) Where there is a real dispute between the parties regarding land and where one party has already filed a civil suit to determine the dispute, it is desirable that the status quo be preserved pending the disposal of the civil suit (see p 58H); *Kasivisvanathan Chettiar v Pereira* [1976] 2 MLJ 110 followed.

[Bahasa Malaysia summary

Plaintif adalah isteri Balwant Singh a/l Sunder Singh, si mati ('si mati tersebut'). Defendan adalah abang si mati. Harta tanah yang dipertikaikan adalah dipegang di bawah No hak milik GM 1164, Lot 4159, Mukim Batu, Daerah Kuala Lumpur, Negeri Wilayah Persekutuan ('tanah tersebut'). Ibu defendan yang pada masa itu adalah tuan punya berdaftar tanah tersebut, telah memberikan kebenaran kepada defendan di dalam tahun 1952 untuk membina rumah tersebut yang sekarang dikenali sebagai No 241-C, Sentul Pasar, 51000 Kuala Lumpur ('rumah tersebut') di atas tanah tersebut dan defendan telah tinggal bersama-sama isteri dan anak di situ semenjak masa itu. Kemudian, ibu si mati memindahkan tanah tersebut ke dalam nama si mati. Selepas kematian suaminya, plaintif memperolehi perintah memindahkan tanah tersebut ke atas namanya. Plaintif telah cuba mengusir defendan tetapi tidak berhasil. Defendan memasukkan kaveat ke atas tanah tersebut. Plaintif telah memohon untuk perintah mengalihkan kaveat tersebut dan untuk perintah selanjutnya bahawa Pendaftar Hak Milik diarahkan untuk membatalkan kaveat tersebut dan bahawa defendan dihalang daripada memasuki apa-apa kaveat lain ke atas tanah tersebut dan kos-kos.

Diputuskan, menolak permohonan plaintif dengan kos:

(1) Adalah adil bahawa status quo dikekalkan sehingga penyelesaian guaman sivil. Defendan telah membuat penegasan fakta-fakta yang mencukupi untuk mengekalkan kaveat tersebut dan plaintif tiada pengetahuan mengenai fakta-fakta tersebut. Di dalam keadaan tersebut, mahkamah mestilah menerima penegasan fakta-fakta yang tidak dicabar itu. Sekurang-kurangnya di dalam ekuiti, defendan seolah-olah mempunyai kepentingan yang boleh didaftarkan di atas tanah berkenaan dengan rumah tersebut yang beliau bina dan di mana beliau telah tinggal tanpa dikenakan sewa dan tanpa sebarang halangan sejak 1952 (lihat ms 58E–F); *Inter-Continental Wiring Co Sdn Bhd v Societe Des Etains De Bayas Tudjuh* [1974] 1 MLJ 145 diikut.

(2) Di mana terdapat pertikaian yang sebenar antara pihak-pihak berkenaan dengan tanah dan di mana satu pihak telah pun memfailkan guaman sivil untuk memutuskan pertikaian tersebut, adalah elok bahawa status quo dikekalkan sehingga penyelesaian guaman sivil (lihat ms 58H); *Kasivisvanathan Chettiar v Pereira* [1976] 2 MLJ 110 diikut.]

Notes

For notes on caveats, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 2580–2810.

Cases referred to

Inter-Continental Mining Co Sdn Bhd v Societe Des Etains De Bayas Tudjuh [1974] 1 MLJ 145 (folld)
Kasivisvanathan Chettiar v Pereira [1976] 2 MLJ 11 (folld)

Legislation referred to

National Land Code 1965 ss 323(1)(a), 327(1)
Small Estates Distribution Ordinance 1955

CY Chang (*CC Chan* with him) (*Paul Cheah & Associates*) for the plaintiff.
Amritpal Singh Doal (*Kerk & Co*) for the defendant.

Cur Adv Vult

Kamalanathan Ratnam J:

Facts

The plaintiff is the wife of Balwant Singh a/l Sunder Singh, deceased ('the deceased'). The defendant is the elder brother of the said deceased. Since 1929 the defendant lived with his late parents in a house situated on land held under Title No GM 1164, Lot 4159, Mukim Batu, Daerah Kuala Lumpur, Negeri Wilayah Persekutuan ('the said land'). The said land was then registered in the name of the mother of the deceased. Subsequently, the mother of the deceased transferred the land into the name of the deceased. Upon the death of her husband, the plaintiff, pursuant to the Small Estates Distribution Ordinance 1955, obtained an order on 13 January 1995 transferring the said land into her name. The defendant has been living with his wife and children in the house situated on the said land ever since. The plaintiff has tried evicting the defendant without success. The defendant entered a caveat on the said land.

The application

This is the plaintiff's application for an order to remove the said caveat and for a further order that the Registrar of Titles be directed to cancel the said caveat and that the defendant be precluded from entering any further caveat on the said land and for costs.

Findings of the court

The defendant has affirmed under oath that after his marriage in India in 1949 and since his return to Malaysia in 1950 his mother, who was then the registered owner of the said land, had given him permission to build the house presently known as No 241-C, Sentul Pasar, 51000 Kuala Lumpur ('the said house') on the said land. He then built the said house in mid-1952 out of his own savings and with the consent and permission of his deceased mother. Since then he has been living in that house where his children were born. Even now his two sons, Pritam Singh and Praim Singh, are living in the said house with their families. The defendant averred that his two other

older brothers had married and were living apart. Since he was eight years old he had been taking care of the family by raising cows. Even when he was working he had given all his earnings to his mother for the upkeep of the family. Out of his own cost and at the request of his mother he had built ten other houses on the said land for rental purposes, to support his mother. His mother had always assured him that all the said houses that were on the land belonged to him.

The plaintiff in her reply affidavit, did not deny these facts. She merely contended she had no knowledge.

The defendant further contended that in 1980 when his deceased mother transferred the said land to the deceased, she had informed the said deceased and him that the area of land on which the buildings were situated should belong to the defendant.

The plaintiff being the registered owner of the land is clearly an aggrieved person pursuant to s 327(1) of the National Land Code 1965 ('the NLC') and is therefore authorised to make this application. However, s 323(1)(a) of the NLC also empowers the defendant to lodge a caveat so long as he can show that he has a registrable interest in the said land. The parties have admitted that the plaintiff has indeed commenced a suit to evict the defendant. To a question by the court, counsel for the plaintiff confirmed that the defendant has indeed been staying in the said house since 1952. Counsel also confirmed that since that time the defendant was never paying any rental to the deceased mother, or to the deceased. I am informed by both parties that the deceased died on 11 May 1994.

It is obvious to me that this is a case where it is only just that I maintain status quo until disposal of the civil suit. The defendant has made averments of facts sufficient to retain the caveat and the plaintiff has no knowledge of those facts. In the circumstances, for the purposes only of this application I have to accept those unchallenged averments of facts. To my mind, at least in equity, the defendant would seem to have a registrable interest in the land in respect of the house which he had built and in which he had been living rent free and uninhibited since 1952. In *Inter-Continental Mining Co Sdn Bhd v Societe Des Etains De Bayas Tudjuh* [1974] 1 MLJ 145 (FC), the Federal Court held that although an agreement to sublease mining land was not in the required statutory form, yet equity would treat the party as having a sufficient registrable interest in the land to enable the party to enter a caveat.

In any case, bound as I am by the authority of the highest court in the land that where there is a real dispute between the parties regarding land and where one party has already filed a civil suit to determine the dispute it is desirable that the status quo be preserved pending the disposal of the civil suit, I dismissed the said application with costs on 15 December 1999 (see the decision in *Kasivisvanathan Chettiar v Pereira* [1976] 2 MLJ 110 (FC)).

Plaintiff's application dismissed with costs.

Reported by Moy Saw Han